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No. 85-1832

In the Supreme Court of the United States

OCTOBER TERM, 1985

MITCHELL EDWIN HEAD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence that law enforcement agents seized from a truck in the course of a warrantless search.

On October 24, 1984, petitioner was charged in an indictment returned in the United States District Court for the Southern District of California with attempted manufacture of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 846; attempted possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 846; making a false statement to a DEA agent, in violation of 18 U.S.C. 1001[1]; and carrying a firearm during the commission of a felony, in violation of 18 U.S.C.

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[1]The trial court dismissed this count.

924(c). Before trial, petitioner moved to suppress chemicals, $47,000 in cash, two guns and other objects that DEA agents seized from a truck that petitioner had loaded at a chemical supply house. On March 5, 1985, the district court suppressed the seized evidence on the ground that the agents did not have probable cause to believe that a crime had been committed. On March 4, 1986, the court of appeals reversed.[2] The court of appeals held that the initial conversation between petitioner and the agents in a parking lot was a consensual conversation that petitioner could have terminated at any time. That conversation, the court held, furnished the agents with reasonable suspicion that petitioner had no legitimate purpose in picking up drugs. Accordingly, the court concluded that the agents acquired probable cause when they looked through a window of the truck, and that petitioner's rights under the Fourth Amendment were not violated when the agents searched the vehicle (Pet. App. 29-53).

Petitioner contends (Pet. 16-27) that he was illegally detained during his initial conversation with the agents in the parking lot and that their subsequent questions should have been preceded by *Miranda* warnings. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court.[3] The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand,

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[2]The petition for a writ of certiorari was due for filing on May 3, 1986. The petition was not filed, however, until May 5, 1986. It was therefore untimely under Rule 20.1 of the Rules of this Court.

[3]It is now almost 18 months since the return of the indictment and over 14 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in the final resolution of the charges against petitioner.

petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review of the court of appeals' decision would be premature at this time.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

MAY 1986

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[4]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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